

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF)	
OF JOHN SHELDON FOR AN AQUACULTURE)	FINDINGS OF FACT,
LEASE LOCATED IN POOR HOUSE COVE,)	CONCLUSIONS OF
SOUTH BRISTOL, LINCOLN COUNTY, MAINE)	LAW AND DECISION

On March 21, 1997, John W. Sheldon, d.b.a. Marine Bioservices Company of South Bristol, Maine applied for an aquaculture lease totaling 3.38 acres of coastal waters of the State of Maine in Poor House Cove, South Bristol, Lincoln County, Maine. The applicant requested the lease for a term of ten years for the purpose of cultivating quahogs, Mercenaria mercenaria, using bottom and suspended culture techniques.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that the Commissioner of the Department of Marine Resources (DMR) may grant a lease if he determines that the project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

A public hearing on this application was held on August 31, 1998 at 7:00 p.m. in South Bristol.

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

The owner of Marine Bioservices Company provided his firm's application. The applicant has been practicing shellfish aquaculture for 20 years. He has raised shellfish in the Damariscotta River north of Glidden Point for five years. That lease has been found to be too

cold for the shellfish to survive over the winter. Therefore, the proposed site at Poorhouse Cove would be used to over winter quahogs from the lease at Glidden Point and grow quahogs from the applicant's hatchery located on High Island, South Bristol. The site would be used primarily during the months of August/September through May/June. The proposed site is located in an area classified as open and may also be used for the relay or depuration process of market size quahogs from the Glidden Point lease with the applicable permits. (Note: Shellfish harvest is not allowed in a "prohibited" area. Shellfish harvesting is allowed through one of two regulated processes called "relay" or "depuration". Relay is the movement of shellfish from a restricted area to an approved open area where the shellfish are kept and then retested after six months prior to approval for market. Depuration is the movement of shellfish from a restricted area to an approved facility that holds the shellfish in clean water for a period of time, less than six months, before being retested and approved for sale to a consumer market.)

The applicant plans to use a type of structure that would be placed on the bottom, referred to as a "flat" or "module" to raise the quahogs. A module consists of a three foot by five foot piece of concrete reinforcing wire mesh, with six inches on each of the long sides bent down to form legs or a two by five foot platform that sits on bottom. The shellfish seed is packed in netting and stapled to the flat upper surface of the structure. The flats are secured along a one quarter inch rope and deployed from a small boat in straight lines. All gear sinks to the bottom. The maximum number of flats to be deployed would be 3000. Since all gear is placed directly on the bottom, and the proposed site is located in a sheltered cove, the traps are not anticipated to require moorings. All gear is retrieved by using a boat hook.

The proposed lease site is located in a relatively shallow area with a bottom substrate consisting primarily of a smooth mud bottom. The water depth at low tide is about four feet, two feet at extreme low. The tidal amplitude is eight to thirteen feet. The current is described as gentle at all tides. Access to the site is from the applicant's own property adjacent to the site. Small boats, four to sixteen feet in size, would be used as work platforms. A letter included in

the application provided written permission for use of the riparian property for access to the proposed lease.

Navigation and uses of the area are described as quite limited. Lobster fishing is the primary commercial activity and it occurs in deeper waters north of the proposed site at the northern end of Poorhouse Cove. The tidal flats at the southern end of the cove are harvested for soft shell clams. Mussels also grow along the shore and it is stated that years ago some mussel dragging did occur. Several pleasure boats are moored seasonally along the western shore of Poorhouse Cove. No moorings are located within or near the proposed lease. The applicant would prohibit dragging and seining on the proposed lease for protection of the shellfish and gear.

The local fauna on the proposed site includes crabs, a few lobsters and mussel clumps, no soft shell clams or submerged vegetation were present. The proposed site is not located within any designated essential or significant habitat areas regulated by the Department of Inland Fisheries and Wildlife.

A marine biologist, employed by the Department of Marine Resources as the Aquaculture Environmental Coordinator (AEC), provided the statutorily required site review written report that he conducted on October 20, 1997. The review consisted of the following: a diver survey across the site for local flora and fauna and bottom composition; collection of plankton; proximity measurements of the proposed site to shore and other existing lease sites; and observations and documentation of local fisheries and other issues. The bottom sediments were composed of about eight inches of mud and silt overlaying sand. The depths of the site ranged from one-half foot to over nine feet at mean low water with low currents. The local flora and fauna consisted of an abundance of mud shrimp and green crabs; an algal mat was common; and rock crabs, blue mussels and rockweed were occasional. No fishing activity was observed. The boundary of the proposed site was adjusted during the site review to compensate for a point of land protruding westward from High Island. This adjustment increased

the proposed lease size to 3.896 acres. The southeast corner of the proposed site was the nearest point to land at approximately 130 feet. No moorings were observed in, or in close proximity to, the site and the site is not located in or near a navigational channel. The nearest existing aquaculture lease is located in the Damariscotta River about 2.75 miles due north over land. The AEC contacted the South Bristol Harbormaster, Mr. Shew, for his report. The Harbormaster was familiar with the applicant and application. He indicated that he foresaw no conflicts with the proposed activities; that the area does ice over in the winter sometimes; there would be no conflict with navigation; and there are no moorings in or near the proposed lease.

Findings of Fact

The proposed lease is located in a shallow area in a dead end cove adjacent to the applicant's hatchery and property. The proposed activities would not in any way impact riparian access. Written permission was provided from the riparian owner of the High Island property. Based on the above, I find that the proposed activities will not unreasonably interfere with the ingress and egress of riparian owners.

The proposed site is not located in a buoyed or marked navigational channel. Evidence provided by the AEC, from the Harbormaster, the AEC observations October 20, 1997 and the applicant, indicates that there is little vessel activity in this area of Poorhouse Cove. Based on this evidence, I find that the proposed lease activities will not interfere with navigation in the area.

The applicant and the AEC provided information that there is limited fishing activity in the area. However, for protection of the gear and shellfish, the applicant requests that dragging and seining, should they occur, be prohibited. Lobster fishing and recreational fishing and boating would be allowed. The nearest aquaculture lease is located 2.75 miles north in the Damariscotta River. Based on this evidence, I find that the aquaculture activities proposed for this site will not interfere with fishing or other uses of the area.

No information in the application or the Department's site review report and observations of the AEC indicates any likelihood of unreasonable interference with local flora and fauna.

Shellfish aquaculture, as proposed for this site, has no potential for ecological degradation. For the above reasons, I find that the proposed activities will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

The applicant owns a shellfish hatchery and production at this hatchery would be sufficient to stock this site. Therefore, I find that there is an available source of quahog seed to be cultured for this lease.

Based on information in the Department's AEC site review and information provided by the applicant, I find that the proposed lease activities will not unreasonably interfere with public use or enjoyment and that the proposed lease site is not located within 1,000 feet of any municipally, state or federally owned beaches, parks, or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture lease activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;

4. The aquaculture lease activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of quahogs to be cultured for the lease site; and
6. The aquaculture lease activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

The evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072 (7-A).

Decision

Based on the foregoing, the Commissioner grants the requested lease of 3.896 acres to the applicant for a period of ten years, from the date of this decision, for the purposes of cultivating quahogs utilizing bottom and suspended type techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow account in the amount of \$5,000.00, conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

(1) dragging and seining shall be prohibited; lobster and crab fishing, recreational fishing and boating shall be allowed on the lease;

(2) the lease area shall be marked in accordance with U.S. Coast Guard regulations; the lease area shall be marked in accordance with Department of Marine Resources regulations

Chapter 2.80, with markers placed no more than 300 feet apart and at each corner. The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year, or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

DATED:_____

Penn Estabrook (Deputy Commissioner)
Department of Marine Resources